

DAVID T. HARDY
BILL OF RIGHTS EDUCATIONAL FOUNDATION
8987 E. TANQUE VERDE
PMB 265
TUCSON, AZ 85749
(520) 749-0241

March 15, 2004

2004 MAR 22 A 11:48
FEDERAL ELECTIONS COMMISSION
OFFICE OF GENERAL COUNSEL

Office of the General Counsel
Federal Elections Commission
999 E Street, NW
Washington, DC 20463

AOR 2004-15

Re: request for advisory opinion

Gentlemen:

I write to request an advisory opinion regarding the Bipartisan Campaign Reform Act.

My situation is this: I am producing a documentary film, to be entitled "The Rights of the People," and to focus upon Bill of Rights related issues. I have finished about half the filming, and in the course of the other half will film some Congressional officeholders, some of whom will be standing for election this year. Also, the film may make reference to members of the current Administration, including President Bush. I will distribute the documentary in non-broadcast form, but would use radio and perhaps television commercials to promote its distribution.

I understand that so long as the documentary is distributed in DVD or other non-broadcast form, it is exempt from the restrictions placed on broadcasts within thirty and sixty days of an election. My question is this: if I purchase airtime for commercials promoting the documentary, and the commercials refer to anyone who is a candidate for office, would those commercials be electioneering activity if aired within the time periods before an election?

Sincerely,



David T. Hardy



FEDERAL ELECTION COMMISSION

Washington, DC 20463

March 29, 2004

David T. Hardy
Bill of Rights Educational Foundation
8987 E. Tanque Verde
PMB 265
Tucson, AZ 85749

Dear Mr. Hardy:

This refers to your letter dated March 15, 2004, concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the purchase of airtime for commercials promoting a documentary film you are producing.

The documentary film focuses on Bill of Rights-related issues. You state that the film will include footage of Members of Congress and will make reference to President Bush and other members of his administration. You also state that you will distribute the film itself in non-broadcast form, but plan to use radio and perhaps television commercials to promote its distribution. You ask whether these commercials would constitute "electioneering activity" if they referred to a candidate for federal office and if they were aired within 60 days before a general election or 30 days before a primary election.

The Act authorizes the Commission to issue an advisory opinion request in response to a "complete written request" from any person with respect to a specific transaction or activity by the requesting person. 2 U.S.C. §437f(a). Such a request "shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made." 11 CFR 112.1(c). The Office of General Counsel shall determine if a request is incomplete or otherwise not qualified as an advisory opinion request. See 11 CFR 112.1(d).

In view of the above requirements, this Office seeks responses to the following questions.

- (1) Are you making this request on behalf of yourself or on behalf of the Bill of Rights Educational Foundation ("the Foundation")? If you are making the request on behalf of the Foundation please answer the following questions:

- (a) Is the Foundation a corporation? If so, is it a for-profit organization?
- (b) Is the Foundation an organization operating under 26 U.S.C. §501(c)(3), 26 U.S.C. §501(c)(4) or 26 U.S.C. §527?
- (2) When you ask whether the commercials would be "electioneering activity," do you mean to ask whether they are "electioneering communications"? If so, please answer the following questions:
- (a) If the commercials clearly identify candidates for nomination for President or Vice President, can they be received by 50,000 or more people in a state in which a primary is being held within 30 days, or anywhere in the United States within 30 days before the first day of a national nominating convention?
- (b) If the commercials clearly identify a Congressional candidate, can they be received by 50,000 or more people in the Congressional district, in the case of a House candidate, or the state, in the case of a Senate candidate, that the candidate seeks to represent?

Upon receipt of your responses, this Office and the Commission will give further consideration to your inquiry. If you have any questions about the advisory opinion process or this letter, please contact Ron Katwan, an attorney in this Office, at 202-694-1650.

Sincerely,


Rosemary C. Smith
Associate General Counsel

DAVID T. HARDY
BILL OF RIGHTS EDUCATIONAL FOUNDATION
8987 E. TANQUE VERDE
PMB 265
TUCSON, AZ 85749
(520) 749-0241

April 21, 2004

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2004 APR 26 A 11: 50

Rosemary C. Smith
Associate General Counsel
Office of the General Counsel
Federal Elections Commission
999 E Street, NW
Washington, DC 20463

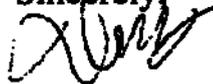
Re: request for advisory opinion

Dear Ms. Smith:

I write in reply to your letter of March 29 -- some personal and occupational emergencies ruled out a quicker response. Here are the answers:

1. I am making the request both on my own behalf and that of the Foundation. It is most probable that the Foundation would pay for the advertising, but possible that I might pay for some ads myself.
2. The Foundation is an Arizona corporation. It will be a not-for-profit, although it has not yet received a determination letter from the IRS relating to 501(c)(4) status.
3. Yes, I was referring to electioneering communications. They would clearly identify at least one candidate for the Presidency, could be received by 50,000 or more people within 30 days of a Presidential primary, a national nominating convention, and in all probability the general election as well. As to the Congressional candidate(s), I do not plan that the commercials would be run in their districts.

Sincerely,



David T. Hardy